

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)
Review of its Rules for Energy)
Efficiency Programs Contained in) Case No. 13-651-EL-UNC
Chapter 4901:1-39 of the Ohio)
Administrative Code.)

In the Matter of the Commission's)
Review of its Rules for the Alternative)
Energy Portfolio Standard Contained in) Case No. 13-652-EL-ORD
Chapter 4901:1-40 of the Ohio)
Administrative Code.)

In the Matter of the Amendment of)
Ohio Administrative Code Chapter)
4901:1-40 regarding the Alternative) Case No. 12-2156-EL-ORD
Energy Portfolio Standard, to)
Implement Am. Sub. S.B. 315.)

REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

I. Introduction

The Public Utilities Commission of Ohio (Commission) initiated Case No. 12-2156-EL-ORD on July 25, 2012. The Commission initiated Case Nos. 13-651-EL-ORD and 13-652-EL-ORD on March 15, 2013. Initial comments were submitted on March 3, 2014. By Entry issued on March 7, 2014 in all three proceedings, the Commission granted an extension of time within which to file reply comments to March 24, 2014. Below are the reply comments of Duke Energy Ohio, Inc. (Duke Energy Ohio).

II. General Comments

Many comments were submitted by interested parties with suggestions for various hearing schedules and relevant regulatory process. Duke Energy Ohio urges the Staff to allow

regulatory flexibility so that a hearing is only scheduled when deemed necessary. There should be no mandatory hearing provisions.

Duke Energy Ohio, in initial comments suggested that energy efficiency and peak demand portfolios should be updated every five years instead of every three. Some parties argued that the portfolio should be submitted every year. An annual portfolio review is impractical and costly. Utility staff and the Commission Staff would be in a constant state of preparing and reviewing documents, which begs the question of when the work actually gets done. In addition, annual reviews would require that the companies provide information relevant to programs that have very little track history. As noted by The Dayton Power & Light Company (DP&L), such a plan would delay program planning. However, Duke Energy Ohio is in favor of added flexibility to allow the opportunity to enhance or introduce new programs or measures in a cost effective manner to enable the utility to continually meet the mandates set forth by the Commission, as well as, remove measures or programs as needed.

With regard to stakeholder collaboratives, there was a variety of comments with respect to when meetings should be held and what should be discussed. Duke Energy Ohio has held a collaborative since the early nineties. The Duke Energy Ohio collaborative (Duke Energy Ohio Community Partnership) has consistently been very productive, efficient, helpful to the process and arguably quite successful in every respect. It is not necessary for the Commission to control the collaborative process or to dictate when such collaboratives are held. The very meaning of the word suggests voluntary participation and congenial discussion. The greater the regulatory oversight, the less creative and outside the box such collaboratives will become. From time to time, the Commission issues orders to resolve certain issues within the collaborative process if necessary. Such directives are manageable but should be limited. Additional regulatory control is ill advised.

Further, Duke Energy Ohio agrees with the comments of the FirstEnergy Companies that Commission rules directing electric distribution utilities to host collaborative meetings and to

dictate frequency and content of such meetings exceeds the Commission's legal authority. Nothing in the law requires that electric distribution utilities share operational cost information with third parties. As the FirstEnergy Companies point out, it is the electric distribution utility that is obligated to comply with the mandates under R.C.4828.66 and to meet the benchmarks as set forth therein. Duke Energy Ohio does not oppose continuing to work with its very successful collaborative group of stakeholders to discuss ongoing programs and to seek respective views on issues and performance. However, further directives are not necessary or helpful.¹

Some stakeholders argue that the Technical Reference Manual (TRM) should be managed in a separate docket. Duke Energy Ohio agrees in particular with the comments of Ohio Power Company (AEP Ohio) that if the TRM is to be used as the basis of compliance reporting in Ohio, then it requires a more substantial process with participation from interested stakeholders and should not be simply an afterthought to the review of the portfolio performance reports.

Duke Energy Ohio agrees with commenters who recognize that the due date for the filing of portfolio approvals is difficult. September 15 does not allow sufficient time for comments and a Commission ruling prior to the beginning of the program calendar year for many electric distribution utilities. An earlier date would allow for more time to fully analyze and present data and examine the portfolio with fully prepared data.

Duke Energy Ohio also agrees with other commenters who point out that the Independent Evaluator (IE) should not have responsibilities beyond verifying the utility led measurement and verification (M&V) and the duty to update the TRM as required by the Commission. The IE should not be responsible for determining reasonableness of costs.

¹ Initial Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, at p.12.

Finally, the Office of the Ohio Consumers' Counsel (OCC) and the Industrial Energy Users-Ohio (IEU) both argue that electric distribution utilities should not be permitted to recover shared savings. IEU argues that shared savings should be totally eliminated, while OCC appears to suggest that the rate set should be based upon sound regulatory judgment. In either case, shared savings has proven to be an excellent tool to align incentives such that electric distribution utilities can be rewarded for *exceeding* the benchmarks. Duke Energy Ohio has never received shared savings for meeting the benchmark, but rather only benefits from the commitment to shared savings for doing even more than is required by law. Thus IEU's argument that the Company is compelled to comply and need not be rewarded is incorrect and does not apply.

III. Comments in Response to Specific Parties

1. Interstate Gas Supply, Inc. (IGS)

IGS commented that the Commission should adopt a regulatory framework for energy efficiency, demand response and advanced energy that permits all providers of products and services to compete on a "level playing field." In particular, IGS argues that "technologies and contractors included in the EDU's portfolio plan are available on an equal and non-discriminatory basis."² To the extent Duke Energy Ohio is able to understand IGS' comments, all technologies and contractors used as vendors in the market place are currently equally available to IGS. IGS' comment about "insider bias" is unclear. The proposed language set forth by IGS in its comments should not be considered unless and until IGS is able to further explain its intentions and what specific "bias" it is seeking to address.

² Comments of Interstate Gas Supply, Inc. at p.2

2. Ohio Advanced Energy Economy (OAEE)

OAEE's comments related to the timing for filing energy efficiency and peak demand reduction plans under proposed Rule 4901:1-39-04(A) are exactly aligned with Duke Energy Ohio's views. OAEE correctly notes that filing annual plans would not be consistent with time horizons pertinent to the process and best practices in the industry. Indeed, if the utilities are required to file such plans on an annual basis, Duke Energy Ohio can foresee the need to retain additional resources dedicated to simply preparing the filing, 24/7. Duke Energy Ohio concurs with OAEE in urging the Commission to reject the annual filing proposal. Duke Energy Ohio urges the Commission to consider instead moving to a five-year filing schedule.

Duke Energy Ohio respectfully disagrees with OAEE however, where OAEE argues that the TRM should be updated by an IE along with external stakeholders. Doing so would take an inordinate amount of time and introduce too much ambiguity into the process. The TRM is not proving to be a useful document and resources spent on its maintenance should be minimized. Updating on an annual basis adds to regulatory burden and is inconsistent with policies set forth in the Governor's Common Sense Initiative.

3. Industrial Energy Users – Ohio (IEU)

IEU comments that the Commission modify Staff's proposed Rule 4901:1-39-06, O.A.C. to provide that the recovery of lost distribution revenue will be allocated to the customer classes that generate the lost distribution revenue. It is not clear what IEU defines as a "customer class" in this context. However, Duke Energy Ohio develops its energy efficiency rates in Rider EE-PDR for residential and non-residential classes. Duke Energy Ohio rate classes DS, DP and TS only pay lost distribution charges associated with non-residential customers. To the extent a decoupling rider is in effect, there is no need to also recover lost distribution revenues, as they are then recovered through the decoupling rider.

Predictably, IEU also advocates elimination of the shared savings provisions, arguing that such provisions are unreasonable. However, shared savings incentive mechanisms have proven to effectively align incentives for utilities with customers interests and to *exceed* the mandates where possible. Such mechanisms have supported energy efficiency and peak demand reduction programs for all the Ohio electric utilities and should continue to do so with the Commission's support.

4. Ohio Power Company (AEP Ohio)

AEP Ohio comments that the TRM should be updated at least one full year in advance of the next calendar year of implementation for program planning. Duke Energy Ohio agrees with this comment. In fact, Duke Energy Ohio urges the Commission to reevaluate the use of the TRM entirely and to consider IEU's comment that it only be applied voluntarily. However, if the Commission deems that it must be updated and relied upon, then it must be done in advance such that the Company may use it and not be penalized for not being in compliance with it when in fact its values are outdated.

AEP Ohio further comments that the Commission should consider a change to reflect the need to avoid disclosure of fixed rebates or customer incentives, to allow the electric distribution utility the flexibility to adjust such amounts as needed and as warranted by market conditions. It is unclear why it was deemed necessary to require such disclosure under competitive circumstances. Allowing the flexibility needed would enhance the competitive market and thereby enhance the benefit available to the customer.

AEP Ohio also urged the Commission to include a rule such that if the filing of a portfolio is not ruled upon by the Commission within sixty days of the comment cycle being completed, then the plan is deemed to be automatically approved.³ Duke Energy Ohio supports

³ Comments of Ohio Power Company at p.7.

this proposed language and agrees that an automatic approval process would enhance the overall administration of these programs. There are more than adequate systems in place to allow stakeholder involvement, including participation in collaboratives, comments, etc. This process would match with the successful process currently in place for self-direct programs.

5. The Ohio Manufacturers' Association Energy Group (OMAEG)

OMAEG comments that the Commission should reserve flexibility to allow electric utilities to update assessments of market potential more frequently than five years, at the utilities' option. OMAEG recommends that the Commission create a rule to permit it to order electric utilities to update assessments inside of the proposed five-year time frame in the event that market conditions or technologies change significantly.⁴ OMAEG further notes that the Commission should consider PJM Interconnect capacity auction time frame when setting program planning requirements.

Duke Energy Ohio concurs with the concept of aligning appropriate programs with the PJM capacity auction. However, the Company does not agree that it is necessary for the Commission to create a mechanism to allow it to order a utility in for an updated market potential assessment. Assessments of market potential are costly and require a full year to accomplish. Ordering additional updates would be time constrained and costly. Also, there is no clarity with regard to the necessary defining elements around what would constitute sufficient change in market conditions or technologies in order to justify such a requirement. The Company disagrees with these recommendations from OMAEG and recommends they be disregarded.

Finally, OMAEG recommends biannual updates to the TRM and further recommends that the Commission establish a stakeholder process for suggesting revisions and additions to the

⁴ Comments of The OMA Energy Group at p.3.

TRM. Again, this focus on the TRM is costly, time consuming, and of little value to the process. Duke Energy Ohio disagrees with this recommendation.

6. Ohio Partners for Affordable Energy (OPAE)

OPAE argues that the proposed rules fail to resolve issues related to the bidding of capacity into the PJM Base Residual Auction (BRA). OPAE further argues that the electric distribution utilities should be required to bid into PJM the entire statutory benchmark value that must be met in any given year and to be responsible for any shortfall. Although OPAE argues that this proposal “resolves the questions associated with bidding capacity into the forward BRA auctions,” it most certainly does not resolve any of Duke Energy Ohio’s concerns and indeed creates many more.

Pursuant to stipulation in Duke Energy Ohio proceeding wherein its portfolio of energy efficiency and peak demand reduction programs were approved, Duke Energy Ohio has agreed to offer 80% of eligible projected cost effective approved program portfolio resources into the PJM BRA. Such participation includes recovery of costs related to measurement and verification and administrative costs, including costs associated with the PJM audit as well as PJM penalties which are considered part of the program costs. Due to the uncertainty that exists with estimating the amount of energy efficiency and demand response that will survive PJM’s precise requirements on measurement and verification, it makes sense to allow some margin for error in bidding load impacts. It is neither in the Company’s interest, nor the customer’s interest, to offer more than is feasible into the PJM BRA.

7. Office of the Ohio Consumers’ Counsel (OCC)

The OCC’s comments represent a significant departure from the support that the Agency has provided for many years with respect to energy efficiency and peak demand reduction. None of the OCC’s arguments make sense in the context of the past participation of OCC in the Duke Energy Community Partnership collaborative. Nor do they make good regulatory policy.

For example, OCC argues that electric distribution utilities should not be permitted to recover lost distribution revenue despite having previously supported the recovery of lost distribution revenue in Case No. 11-5905-EL-RDR⁵ wherein OCC specifically noted:

OCC conceptually supports the use of a volumetric decoupling mechanism as a means to promote cost-effective energy efficiency. Energy efficiency has the potential to save customers money. In general terms, a decoupling mechanism collects from, or refunds to, customers the difference between revenues actually collected by the Company and authorized revenues approved by the Commission in the Company's last rate case.

In an earlier case, OCC, in collaboration with other parties, said:

While a lost revenue recovery mechanism is not ideal, OCEA supports the Company's right to propose a mechanism if an application for decoupling is not approved. The utility cannot be expected to simply absorb the cost of its energy efforts.⁶

Despite such support previously, OCC now argues otherwise.⁷ Such a change of support and policy is difficult to understand in the absence of an explanation or compelling rationale.

OCC next argues that shared savings incentives should only be paid for actual utility performance that is demonstrated to have exceeded the statutory benchmark. Again, the OCC has supported shared savings mechanisms in Duke Energy Ohio proceedings in the past. It comes as a surprise that OCC now objects to such mechanisms.

The Commission Staff proposed language in Rule 4901:1-39-04(E) wherein "within thirty days after the deadline for filing comments pursuant to paragraph (D) of this rule, the electric utility shall file its response, in which it shall indicate which recommendations it has accepted for inclusion into its program portfolio plan." OCC argues that this is an abrogation of

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Distribution Decoupling Rider*, Case No. 11-5905-EL-RDR, Comments by the Office of the Ohio Consumers' Counsel, February 23, 2012.

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Comments by Members of the Ohio Consumer and Environmental Advocates, September 21, 2011.

⁷ Comments of the Office of the Ohio Consumers' Counsel at p.13.

the Commission's authority to determine what programs are to be included in the program portfolio. However, OCC surely must agree that the Commission always retains the authority to order otherwise as it deems appropriate. There is no indication that the Commission intends to relinquish any existing authority.

8. Joint Comments of the Environmental Law & Policy Center, Ohio Environmental Council, Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, and Citizen's Coalition, (Environmental and Consumer Advocates or ECA)

The ECA, similar to other parties, argues that the electric distribution utilities should be required to bid more energy efficiency into the PJM BRA. Again, to the extent customers wish to assume the risk inherent in doing so, Duke Energy Ohio is willing to act on behalf of the customer and do as the ECA advocates. However, the electric distribution utility must be held harmless if the Commission determines that such a plan is advisable.

ECA recommends that the Commission implement both the current pre-approval and ex-post verification of utility activities. This exhaustive regulatory plan represents regulation gone wild. Such oversight is costly and unnecessary. The current process involves an enormous amount of time and resources, much of which is at the customer's expense. Adding more regulatory burden and therefore more cost to the customer is not a useful suggestion. Likewise, the ECA's recommendation for additional reporting of metrics is unnecessary and creates additional regulatory burden without providing a benefit.

9. COMMENTS RELATED TO COMBINED HEAT AND POWER AND WASTE ENERGY (CHP)

Many of stakeholders provided comments regarding policies and procedures related to combined heat and power (CHP). Duke Energy Ohio responds here generally to the arguments made and will note arguments related to particular comments as needed.

Duke Energy Ohio does not clearly understand CHP as an energy efficiency tool. Clarity is needed with respect to calculating the kWh related to proposed projects. In order to implement plans consistent with state policy, the Company must first understand how CHP is to

be calculated, incentivized and claimed with the electric distribution utilities to meet respective benchmarks and over what period of time such claims are to be applicable. Much of the policy discussion urged the various commenters is related to individual interests of each party. Thus, the comments raise more questions and provide little in the way of appropriate guidance.

Duke Energy Ohio respectfully suggests that the Commission must provide guidance regarding the following elements of policy with respect to CHP:

- How should eligible energy & demand savings be calculated and/or measured for CHP and WER systems, respectively?
- Should it be completely performance based?
- Should a project be separated into design and construction and then into performance?
- Should there be a larger incentive paid over a shorter time frame, or a smaller incentive paid over a larger time frame, and what is the time frame?
- Does the Commission prefer that each utility propose its individual programs?

With regard to providing incentives, Duke Energy Ohio urges the Commission to permit each electric distribution utility to develop its own program design for incentives using parameters that the Commission establishes.

To the extent the Commission considers an early lifecycle cash payment, electric distribution utilities must be permitted to seek return of the funds or be held harmless in the event that the system's actual performance does not meet program requirements. Consequently, there must be some project reporting over time to allow such performance to be evaluated.

IV. Conclusion

Duke Energy Ohio appreciates this opportunity to provide comments to the Commission regarding changes to the energy efficiency, peak demand, renewable and advanced energy rules under review. Duke Energy Ohio respectfully requests that the Commission consider the comments made above and adopt the above recommendations in a final order.

Respectfully submitted,
Duke Energy Ohio, Inc.



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. Mail, personal, or electronic mail, on this 24th day of March, 2014 to the parties listed below.


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